

APPLICATION FOR JUDGESHIP

4th Judicial District 2006

A. PERSONAL INFORMATION

1. Full Name: Robert L. "Dusty" Deschamps, III
 - a. What do you commonly go by: Dusty Deschamps
2. Birthdate: 12-02-44 Are you a U.S. citizen? yes
3. Social Security No.
4. Home Address:
Phone:
5. Office Address: P.O. Box 278, Pablo, MT 59855
Phone: 406-675-2700 ext. 1176
6. Length of residence in Montana: 61 years
7. List your place of residence for the past five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
1944 to present	Missoula	Montana

B. EDUCATIONAL BACKGROUND

8. List the names and location of schools attended, beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Missoula Co. H.S.	Missoula, MT	June, 1962	diploma
University of Mont.	Missoula, MT	July, 1966	B.A.
University of Mont.	Missoula, MT	January, 1970	J.D.
University of Colo.	Boulder, CO	June 1973 (Natl. Inst. Trial Advocacy)	
9. List scholarships, awards, honors and citations you have received (Eagle Scout, Book Awards, Boy's or Girl's State, etc.)

Eagle Scout, 1958; Montana Council, B.S.A.: District Award of Merit, 1978, 1985; Silver Beaver, 1989; National Court of Honor, B.S.A., Distinguished Eagle Scout, 1989; National College of District Attorneys, John Price Lecturer Award, 1995; Western Montana Bar Association, Distinguished Service Award, 1997; United States Attorney, Distinguished Service Award, 1998; Montana County Attorneys Assn., Certificate of Recognition, 1998; Sentinel High School, Montana Probation and Parole Officers Assn., Missoula County Sheriff's Dept., Certificates of Appreciation, 1998.

10. Were you a member of the Law Review Board? If so, please state the title and citation of any article which was published and the subject area of the article.

No.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

11. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Montana Supreme Court	1970
United States District Court, Montana	1970
United States Supreme Court	1980
United States Ninth Circuit Court of Appeals	1982
Tribal Court, Confed. Salish & Kootenai Tribes	1999

12. Indicate your present employment (list professional partners or associates, if any).

Managing Attorney, Tribal Prosecutor, Confed. Salish & Kootenai Tribes

Special Deputy County Attorney, (presently) Custer, Yellowstone, Toole, Lewis and Clark, Lake, and Missoula counties.

Special Assistant City Attorney, (presently) City of Hamilton

Sole Practitioner

13. State the name, dates and addresses of all law firms with which you have been associated in practice, and of all governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
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City of Missoula, 435 Ryman, Missoula, MT 59802	legal intern	1968-1969
Missoula County 200 W. Broadway, Missoula, 59802	deputy county atty.	1970; 1999
Missoula County 200 W. Broadway, Missoula, 59802	county attorney	1971-1998
Deschamps, McLatchy & Tolliver 200 W. Broadway, Missoula, 59802	partner	1971-1973
Deschamps, Andrews & Dye 202 N. Higgins, Missoula, 59802	partner	1973-1976
United States Attorney District of Montana P.O. Box 1478, Billings, MT 59103	spec. A.U.S.A.	1989-1998
Confed. Salish & Kootenai Tribes P.O. Box 278, Pablo, MT 59855	tribal prosecutor	1999-present
Sole Practitioner		1999-present
Anaconda Deer-Lodge County 118 E. 7 th , Anaconda, MT 59711	spec. dep. co. atty.	2004-2005
Big Horn County P.O. Box 908, Hardin, MT 59034	spec. dep. co. atty.	1999-2001
Custer County 1010 Main St., Miles City, MT 59301	spec. dep. co. atty.	2005-present
Fergus County 712 W. Main St., Lewistown, MT 59457	spec. dep. co. atty.	2001-2004
Flathead County P.O. Box 1516, Kalispell, MT 59903	spec. dep. co. atty.	2003-2005
Glacier County P.O. Box 428, Cut Bank, MT 59427	spec. dep. co. atty.	2004-2005
Lake County 106 4 th Ave. E., Polson, MT 59860	spec. dep. co. atty.	2003-present
Lewis and Clark County 228 Broadway, Helena, MT 59601	spec. dep. co. atty.	2002-present
Madison County P.O. Box 73, Virginia City, MT 59755	spec. dep. co. atty.	2004-2005
Missoula County	spec. dep. co. atty.	1999-present

200 West Broadway, Missoula, MT 59802

Pondera County spec. dep. co. atty. 2002-2004
20-4th Ave. SW, Conrad, Mt 59425

Powell County spec. dep. co. atty. 2003-2005
P.O. Box 805, Deer Lodge, MT 59722

Ravalli County spec. dep. co. atty. 2004
205 Bedford St., Hamilton, MT 59840

Sanders County spec. dep. co. atty. 2003-2004
P.O. Box 519, Thompson Falls, MT 59873

Toole County spec. dep. co. atty. 2003-present
P.O. Box 730, Shelby, MT 59474

Yellowstone County spec. dep. co. atty. 1999-present
P.O. Box 35025, Billings, MT 59107

City of Billings spec. asst. cit. atty. 2000-2004
P.O. Box 1178, Billings, MT 59107

City of Hamilton spec. asst. cit. atty. 2005-present
P.O. Box 210, Hamilton, Mt 59840

14. If you have not been employed continuously since the completion of your formal education, describe what you were doing.

September, 1998 to November, 1998: Montana Democratic Candidate, United States House of Representatives.

November, 1998 to January, 1999: ranching, vacation

May, 1999 to August, 1999: ranching, non-legal contract work. (see answer to question 55, below)

15. Describe the nature of your present law practice, listing the major types of law you practice and the percentage each constitutes of your total practice.

Criminal Prosecution: 85 %

Adult and Child Protection: 7%

Indian law: 5%

Miscellaneous civil practice: 3%

16. List other areas of law in which you have practiced, including teaching, lobbying, etc.

Local Government Law; Environmental Law; Administrative Law; School Law; Consumer Protection Law; Land Use Law; Utility Regulation Law; Contracts; Torts (plaintiff and defense); Probate; Domestic Relations Law; Public Finance Law (bonds, taxation); Legislation; Labor Law.

17. If you specialize in any field of law, what is your specialty?

Criminal Law.

18. Do you regularly appear in court?

Yes.

What percentage of your appearance in the past five years were in:

Federal Court	0%
State or local courts of record	96%
Administrative bodies	2%
Other (courts of limited jurisdiction)	2%

19. During the past five years, what percentage of your practice has been trial practice?

10% (comment: This is an arbitrary estimate. The vast majority of my practice is criminal prosecution, with some related prosecutor functions, such as juvenile and adult and child protection matters such as dependent and neglected child proceedings, mental health commitments, etc. All of these entail contested court proceedings. In

the criminal arena, virtually all cases involve pre-trial activities, including motions, discovery, and contested hearings, all of which could be considered "trial practice." However, in the end only about 2-4% of all criminal cases actually go to trial. Because of the nature of the cases I am called in to handle as a special prosecutor, the percentage of those cases that go to trial is higher, perhaps approaching 50%. Between my tribal work and my special prosecutor work, I have a jury trial about every other month.)

20. How frequently have you appeared in court?

Twenty times per month on average, with typically 20 to 30 cases per appearance. (comment: Over my career, I estimate I have spent between 20% and 30% of my time, 8 to 15 hours a week, in a courtroom. I doubt if there has been a week in 36 years, except when I was on vacation or at training, that I made no court appearance. When I am trying a case, I can easily spend 7 hours a day in court. Typically, when I do go to court, it is to handle multiple cases, in recent years, averaging 20 to 30 cases per appearance.)

21. How frequently have you appeared at administrative hearings?

Two times per month on average. (comment: The frequency of such appearances has diminished to virtually none since I retired as the Missoula County Attorney.)

22. What percentage of your practice involving litigation has been:

Civil	5%	
Criminal		95%
Other	0%	

23. Have you appeared before the Montana Supreme Court within the past five years? If so, please state the number and types of matters handled. Include the case caption, case citation (if any), and names addresses and phone numbers of all opposing counsel for the five most recent cases.

Yes.

Gaudreau v. Clinton Irrigation District, 2001 MT 164 (tort defense)

opposing counsel: Lon J. Dale
P.O. Box 4847
Missoula, MT 59806
406-728-1455

State v. Bailey, 2004 MT 87 (criminal appeal - Sexual Assault)

Opposing counsel: Palmer Hoovestall
P.O. Box 747
Helena, MT 59604
406-457-0970

State v. Grindheim, 2004 MT 311 (criminal appeal -Sexual Intercourse)
Without Consent)

Opposing counsel: Torger Oaas
P.O. Box 76
Lewistown, MT 59457
406-538-2338

State v. Clifford, 2005 MT 219 (criminal appeal - Tampering with or Fabricating Evidence; Threats in Official Matters)

Opposing counsel: Palmer Hoovestall
P.O. Box 747
Helena, MT 59604
406-457-0970

State v. Holt, 03-594 (pending criminal appeal - Theft)

Opposing counsel: Chad Wright
P.O. Box 200145
Helena, MT 59620
406-841-2001

(Comment: In Montana, the Attorney General handles all appeals of criminal matters. The above criminal cases all were ones I tried in the District Court and which had my name listed as counsel of record on the appeal. There have been recent appeals of cases I tried in Missoula County, but which list my successor, Fred VanValkenburg, as counsel. A recent example is Swan v. State, 2006 MT 39 (Deliberate Homicide). The only case listed above where I wrote the briefs is Gaudreau v. Clinton Irrigation District, 2001 MT 164, a civil tort defense case I tried and handled on appeal for the irrigation district. In the past five years I have also completely handled two appeals to the Confederated Salish and Kootenai Tribal Court of Appeals.

24. State the number of jury trials you have tried to conclusion in the past ten years.

Sixty. (comment: This is an approximate number)

25. State the number of non-jury trials you have tried in the past ten years.

Twenty five. (comment: This is an approximate number)

26. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Please include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.

State v. Lowe, Yellowstone Co. Dist. Ct. cause DC-03-0458

(Assault on a Peace Officer; Criminal Endangerment)

Presiding judge: Susan Watters, 406-256-2911

Opposing counsel: Jack Sands
100 N. 27th St. #250
Billings, MT 59101
406-245-2391
trial date: October, 2003, retrial, February 2004

State v. Lynch, Yellowstone Co. Justice Ct. cause CR-03-1339
(Partner or Family Member Assault)
Presiding judge: Pedro Hernandez, 406-256-2894
Opposing counsel: Vern Woodward
P.O. Box 2502
Billings, MT 59103
406-245-6238
trial date: April, 2004

Tribes v. McDougall, C.S.K.T. Tribal Court cause 04-890-CR
(Contributing to Delinquency of a Minor)
Presiding judge: Brad Pluff, 406-675-2700
Opposing counsel: Larry Ginnings
P.O. Box 278
Pablo, MT 59855
406-675-2700
trial date: September, 2004

Tribes v. McDougall, C.S.K.T. Tribal Court cause 04-939-CR
(Assault on a Peace Officer; Possession of Weapon)
Presiding judge: Brad Pluff, 406-675-2700
Opposing counsel: Larry Ginnings
P.O. Box 278
Pablo, MT 59855
406-675-2700
trial date: October, 2004

Tribes v. Quequesah, C.S.K.T. Tribal Court cause 04-1014-CR
(Sexual Intercourse Without Consent)
Presiding judge: Brad Pluff, 406-675-2700
Opposing counsel: Terry Sehestedt
P.O. Box 8281
Missoula, MT 59802
406-728-6771
trial date: December, 2004

State v. Benjamin, Flathead Co. Justice Ct. cause A37197
(Obstructing an Officer)
Presiding judge: David Ortley, 406-758-5642
Opposing counsel: James Bartlett
P.O. Box 2819
Kalispell, MT 59903
406-756-1266
trial date: January, 2005

Tribes v. Lopez, C.S.K.T. Tribal Court cause 04-1613-CR

(Criminal Endangerment)
Presiding judge: Brad Pluff, 406-675-2700
Opposing counsel: Larry Ginnings
P.O. Box 278
Pablo, MT 59855
406-675-2700

trial date: February, 2005

Tribes v. Hawkbear, C.S.K.T. Tribal Court cause 04-1874-CR
(Domestic Abuse)
Presiding judge: Winnona Tanner, 406-675-2700
Opposing counsel: Larry Ginnings
P.O. Box 278
Pablo, MT 59855
406-675-2700

trial date: February, 2005

Tribes v. Corral, C.S.K.T. Tribal Court cause 04-2106-CR
(Sexual Assault)
Presiding judge: Gary Acevedo, 406-675-2700
Opposing counsel: James P. Taylor, Ann Sherwood
P.O. Box 278
Pablo, MT 59855
Trial date: July, 2005

State v. Hoffman, Glacier County Dist. Ct. cause DC-05-13
(Sexual Assault)
Presiding judge: Marc Buyske, 406-434-2451
Opposing counsel: Nathan Hoines
P.O. Box 829
Great Falls, MT 59403
406-761-0996
trial date: October, 2005

Tribes v. Diaz, C.S.K.T. Tribal Court cause 04-793-CR
(Assault)
Presiding judge: Winnona Tanner, 406-675-2700
Opposing counsel: Joey Jayne
P.O. Box 741
Arlee, MT 59821
406-726-5639
trial date: November, 2005

Tribes v. Benn, C.S.K.T. Tribal Court cause 05-1521-CR
(Sexual Assault)
Presiding judge: Brad Pluff
Opposing counsel: Joey Jayne
P.O. Box 741
Arlee, MT 59821
406-726-5639
trial date: February, 2006

Tribes v. White, C.S.K.T. Tribal Court cause 05-1436-CR

(Assault)
Presiding judge: Gary Acevedo
Opposing counsel: Tom Kragh
410 First Street E., Suite 9
Polson, MT 59860
406-883-9327
trial date: March, 2006

27. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

Although I have appeared before administrative boards in the last five years, I don't recall any appearances in that time frame that involved an adversary proceeding.

28. If you have published any legal books or articles, other than Law Review articles, please list them, giving citations, dates, and the topics involved. If you lectured on legal issues at Continuing Legal Education seminars or otherwise, please state the date, topic and group to which you spoke.

PUBLICATIONS:

"Guide to Antitrust for Public Agencies", pamphlet, 1978

"Generating Non-Traditional Revenue for the Prosecutor's Office", The Prosecutor, Vol. 22, No. 4 (1989)

"The Prosecutor as a Community Leader - The Moral Standard Bearer", The Practical Prosecutor, (NCDA Journal) (1995)

"President's Message", The Prosecutor, Vol 28, Nos. 4 and 5 (1994); Vol 29, Nos. 1, 2, and 3 (1995).

Review, "Shock Incarceration in New York", Prosecutor's Perspective, (APRI Journal) (Fall 1995)

Various news articles, editorials, and committee reports for "The Montana Lawyer", the newsletter of the State Bar of Montana; and the "NDAA Bulletin", the newsletter of the National District Attorneys Association.

SEMINARS & TRAINING:

Montana County Attorneys Association

Lecturer, Fairmont Hot Springs, 1978: Drug Prosecution

Lecturer, Fairmont Hot Springs, 1991, Criminal Procedure

Montana Law Enforcement Academy

Lecturer, Bozeman, 1976 - 1998: Grand Jury proceedings, criminal law, criminal procedure, gambling law.

Montana Judges Association

Lecturer, Helena, 1988: Trial Tactics

Montana Magistrates Association
 Lecturer, Red Lodge, 1989: Elements of Crimes

Montana Association of Counties
 Lecturer, Great Falls, 1990: Risk Management

Montana Dept. of State Lands
 Lecturer, Missoula, 1992: Risk Management -Safety of Dams

State Bar of Montana
 Speaker, Great Falls, 1991: Criminal Procedure

National District Attorneys Association
 Lecturer; speaker, various locations, 1989 - 1998: Office
 administration, press relations, economic crime, juvenile justice

National College of District Attorneys
 Lecturer, various locations, 1989 - 1994: office administration
 1995 John Price Lecturer, Houston, Texas, June, 1995.

Bureau of National affairs (BNA)
 Member, 1991 -2001: Advisory Board, Criminal Practice Manual

Ontario Crown Counsel Association
 Speaker, Ontario, Canada, 1994: Prosecutor professionalism

Missouri Prosecuting Attorney's Council
 Lecturer, Lake of the Ozarks, 1994: Prosecutor professionalism

Colorado District Attorneys Council
 Lecturer, Steamboat Springs, 1994: office administration

North Dakota State's Attorneys Association
 Lecturer, Bismarck, 1995: office administration

Iowa County Attorney's Association
 Lecturer, Cedar Rapids, 1995: prosecutor professionalism

Texas District and County Attorney's Association
 Lecturer, S. Padre Island, 1995: prosecutor professionalism

National Council of Juvenile and Family Court Judges
 Speaker, Phoenix, 1996: Juvenile Justice

USAID, ARD/CHECCHI, Rule of Law Consortium
 Presenter; faculty, Russian Procurator Training Program, Moscow,
 Russia, 1996: American criminal jurisprudence

State of Alaska Attorney General

Consultant; trainer, Juneau, Anchorage, Fairbanks, 1997: Criminal Division Management Study

National Advocacy Center

Faculty, Columbia, S.C., 2000 - present: Trial Advocacy I and II

National Institute of Justice

Peer review consultant, Washington, D.C., 2003 - present:

Present peer review papers, and serve on peer review panels for papers, studies and proposals, primarily for criminal justice related projects in Indian country.

Bureau of Indian Affairs

Speaker, Las Vegas, NV, 2005: Alcohol related crime in Indian Country

University of Montana

School of Law, various times over years: guest lecturer on criminal law, trial tactics, local government law, prosecutor ethics and professionalism

School of Business Administration, various times over years: guest lecturer on criminal law, consumer law

School of Forestry, 2003: lecturer on law for forest owners

Sociology Dept., various times over years: guest lecturer on criminal justice and criminology

Missoula County High Schools

Various times over years: guest lecturer on criminal law and procedure, criminology, consumer law

Various professional and civic organizations

Various times over years: Speaker on criminal law and procedure, bad check law, consumer protection

D. PROFESSIONAL AND PUBLIC SERVICE

29. List all the bar associations and legal professional societies of which you are a member and give the titles and dates of any office you have held in such groups, and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

Montana County Attorneys Association (emeritus)

President 1974 -1975

Board of Directors 1972-1982

Montana Delegate to National District Attys. Assn. Board, 1980-1984

National District Attorneys Association

President 1994 - 1995

Chairman of the Board 1995 - 1996
Vice President 1984 - 1994
Board of Directors 1980 - present
Chair, National Committee (jurisdictions with less than 200,000
population) 1986 - 1994
Member, Executive Committee, 1994 - 1998
Delegate to Executive Working Group (Attorney General of the
United States, 4 state attorneys general, 4 district attys.)
1993 - 1997

State Bar of Montana
Chair, Sup. Ct. Commission on Rules of Criminal Procedure,
1986- 1994
Liaison to ABA Section of Criminal Justice, 1988 - 1994

American Bar Association (inactive)
Council member, Government and Public Sector lawyers Division,
1995 - 1997

Western Montana Bar Association
President 1979 - 1980

30. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the past five years. Please state the title and date of any office you have held in each such organization. If you held any offices, please describe briefly your activities in the organization.

Saint Patrick Hospital and Health Sciences Center (Mont. non-profit corp., and wholly owned subsidiary of Providence Health & Services)
Chairman of the Board 2005 - present
Member, Governing Board, 2001 - present
Member, Advisory Board, 1988 -1994

Montana Council, Boy Scouts of America
President, 1992 - 1993
Western Area Vice President, 1986 - 1992
Missoula Area District Chairman, 1974 - 1982
Member, Board of Directors, 1974 - 2002
Member, Melita Island Committee, 2002 - 2005

United Way of Missoula County
President, 2000 - 2001
Campaign Chair, 1994 - 1995; 1999 - 2000
Member, Board of Directors, 1976 - 1984; 1992 - 2002

Community Hospital Foundation
Member, Foundation Board, 1988 - present

Citizens for a Weed Free Future (Montana non-profit advocacy group)
President, 1999 - present

Five Valleys Land Trust
Landowner committee member, 2000 - 2004

Missoula County Weed District
Landowner group project leader, 1996 - present

Christ the King Catholic Church
Member, building committee, 2000 - 2005

Montana Democratic Party

31. Have you ever run for, or held, public office? If so please give the details.

Missoula County Democratic Central Committee, 1970 - 1978

Missoula County Attorney, 7 terms, 1970 - 1998

Democratic Candidate, Montana, U.S. Congress, 1998

E. HEALTH RECORD

32. Do you have any disabilities or impairments that might interfere with your performance of the duties of a judge? If so, please explain.

No.

F. PROFESSIONAL CONDUCT AND ETHICS

33. Have you ever been disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, give the particulars.

No.

34. Do you know if any proceeding is pending against you before any court, the Commission on Practice of the State of Montana, Judicial Standards Commission, or by any administrative agency or disciplinary committee? If so, give the particulars.

No.

35. Have you ever been found guilty of contempt of court, or sanctioned by any court for any reason? If so, please explain.

No.

36. Do you disagree with any of the Canons of Judicial Ethics applicable to Montana Judges? If so, please explain.

No.

37. Have you ever been arrested or convicted of a violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of \$100 or less was imposed unless it also included a jail sentence.

Disorderly Conduct(?): Aspen, CO, 1963 (\$150 fine)

Disorderly Conduct; Resisting Arrest: Missoula, MT, 1963 (\$265 fine)

38. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, please give the particulars, including the amounts involved.

No.

39. Have you ever been found guilty in any civil or criminal proceedings with conduct alleged to have involve moral turpitude, dishonesty and/or unethical conduct? If so, please give details.

No.

40. Is there any circumstance or event in your personal or professional life which, if brought to the attention of the Commission, the Governor or the Montana Supreme Court, that would affect adversely your qualifications to serve on the court for which you have applied? If so, please explain.

No.

G. BUSINESS AND FINANCIAL INFORMATION

41. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, please give details, including dates.

Self-employed rancher, (Marshall Creek Cattle Co., LLC) 1968 - present

Rentals, 1976 - present

42. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of such business, its nature, and the nature of your duties. State whether you intend to resign such position immediately upon your appointment to a judicial office.

See above, regarding ranching and rental businesses and service on governing board of St. Patrick Hospital and Health Sciences Center. I have reviewed the Canons of Judicial Conduct and have discussed this with Prof. Dave Patterson at the U of M School of Law, who serves as the reporter for the Montana Supreme Court Commission on the Code of Judicial Conduct. He advises that this service for a non-profit corporation is not a violation of the Canons, and I agree. Therefore,

it is not my intention to resign from the hospital board. However, I would recuse myself from any case involving the hospital.

It does not appear to be a violation of the Cannons to operate a ranch or rental properties, so again, I intend to continue with these activities.

43. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization, If so, please identify the source and the approximate percentage of your total income it constituted over the past five years.

Ranch: 18%; Rentals: 8%.

44. Do you have any financial interests, investments or retainers which might conflict with the performance of your judicial duties, or which in any manner or for any reason might embarrass you? If so, please explain.

No.

45. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?

Yes.

If not, Please explain.

Not Applicable.

46. Do you have any liens or claims outstanding against you by the internal Revenue Service?

No.

If yes, please explain.

Not applicable.

47. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five (5) years? If so, please give details.

No.

48. Please explain your philosophy of public involvement and practice of giving your time to community service.

As my record shows I have devoted my entire adult life to public and community service. I have also strongly encouraged people working under my supervision to participate in similar activities.

The origin of this lifestyle probably is the example set by my parents, and the values of my lifetime in working class Milltown-

Bonner. In that community most people have been of modest means, but share common values of mutual support and community involvement. I must also mention the influence and support of my wife Becky whose record of service to the community and her profession surpasses mine. My lifelong participation in Scouting, with its principles of character, leadership, and service has also molded me, and my philosophy of public involvement and public service is best summed up by these portions of the Scout oath: "On my honor, I will do my best: To do my duty to God and my country, and . . . To help other people at all times."

H. WRITING SKILLS

49. In the last five years, explain the extent you have researched legal issues and drafted briefs. Please state if associates or others have generally performed your research and the writing of briefs.

Approximately 15% of my working time is spent researching and writing legal briefs and memorandums for trial courts and some appellate courts. I research and write 100% of my current work, although I formerly used legal interns for some research and writing support when I was the Missoula County Attorney.

50. If you have engaged in any other types of "legal writing" in the last five years, such as drafting documents, etc., please explain the type and extent of writing you have done.

I occasionally draft contracts, legislative proposals, and legal opinion letters. A considerable amount of my time, probably close to 50%, is spent talking to witnesses and reviewing investigation files and from these sources drafting criminal complaints, affidavits of probable cause, petitions, and similar documents, as well as orders to implement court actions. This is a mass production enterprise, usually under intense time and interruption pressure because pursuant to Riverside County v. McLaughlin, 500 US 44 (1991) probable cause must be determined and charges filed against incarcerated persons within 48 hours of their arrest.

51. Please attach a writing sample of no more than ten pages which you have written yourself. A portion of a brief or memorandum is acceptable.
52. What percentage of your practice for the last five years has involved research and legal writing?

Up to 65%. See answers to questions 49 and 50.

53. Are you competent in the use of Westlaw and/or Lexis?

Yes. (Westlaw)

I. MISCELLANEOUS

54. Briefly describe your hobbies and other interest and activities.

A significant portion of my personal time is devoted to community service activities, which give me much satisfaction.

I deeply enjoy most outdoor activities although at present my primary release for this interest is ranching, and the attendant working with livestock, fencing, haying, irrigating, etc.

I try to work out at a gym three times a week, and occasionally bicycle, run and hike. I used to ski a lot, and am a certified ski instructor and lifetime honorary member of the Northern Rocky Mountain Ski Instructor's Association. I would like to get back to doing more skiing.

I am a compulsive reader, and read anything available to fill idle time, even during court appearances when I am not actively involved with the particular case before the court. I probably read a novel or two a month as well as 20-30 periodicals, and one or two newspapers a day. (Last novel read: Scott Turow, Ordinary Heroes.)

Finally, my wife Becky and I enjoy regional cultural events, Grizzly sports, but especially spending time with our children and grandchildren. We also enjoy taking short getaways, most frequently in conjunction with family activities and professional travel.

55. Describe the jobs you have held during your lifetime:

Apart from the legal employment described in answers to questions 12, 13, and 31, and the personal business activities described in answer to question 41, my employment has primarily been when I was a youth.

I worked as a hand on my family ranch from the age I was able to do so until most of the Missoula area operation was sold off in 1967 and I took over personal responsibility for what was left in 1968. As a teenager I made extra money cutting, splitting, and delivering firewood. I began working as a summer laborer for the Physical Plant Dept. at the University of Montana in 1962, and continued this seasonal employment through the summer of 1967. Because of my industriousness and leadership skills, I became a crew boss at the Physical Plant in 1963 and continued in that capacity through the summer of 1967.

I also did some contract weed management work for the City of Missoula open space program in the spring and summer of 1999. This was during a period between a temporary appointment as a deputy county attorney to cover for a regular deputy on military leave, and my current employment with the Tribes, which commenced in August, 1999.

56. Please identify the nature and extent of any pro bono work that you have personally performed during the past five years.

I have without fee routinely assisted citizens with landlord-tenant and consumer protection issues, and have donated considerable non-litigation legal work to the various non-profit organizations I have been associated with. Examples of this work include creating and maintaining non-profit corporations, personnel and contract issues, real property transactions, and work on limiting liability. When I left the county attorney's office and had no statutory constraints on

my private practice, I became somewhat involved in pro bono litigation as well, primarily in the fields of landlord-tenant, dissolution and child custody. I do about one contested pro bono case per year. I currently have one such case in active litigation. (Missoula District Court cause DR-05-125)

57. In the space provided, please explain how and why any event or person has influenced the way you view our system of justice.

The event, or more accurately, the series of events in my youth, often involving alcohol-fueled "hell raising," which at times led to personal encounters with our system of justice, seem to me to have had the greatest impact on the way I view that system.

I have always felt that a person who has never done anything wrong, resulting in actual or at least potential scrapes with the law, most likely does not have the proper degree of empathy to be a good prosecutor. The same principle applies to judges. If one has "never walked in the other guy's shoes" it is difficult to truly understand how he or she got into a particular predicament, and even more difficult to fashion appropriate remedies to help the person avoid similar problems in the future. Prosecutors, and judges, who do not have that understanding can be harshly intolerant and judgmental. At the other extreme, they can be naïve and easily manipulated.

Two other experiences have also influenced my views on our system of justice. One is a lifetime of close association with working class people along with the challenges they face, leading to a personal appreciation that justice must be open and equal to all. The second experience is quite distinct. I spent time in Russia teaching Russian prosecutors about the rule of law. In their system, the state is all-powerful. Although the system is full of corruption, in principle everything is designed to make individual liberties secondary to the state's interest in maintaining order and compliance. When the American system was described to Russians, they were incredulous. They could not understand how our system, which promotes and actively protects the fundamental rights of the individual over those of the state, could ever maintain order or hold anyone accountable. My answer was that it is difficult, but our founders who had experienced the totalitarian power of the monarchy intentionally designed it that way, and, despite its apparent flaws, it works. The observations of my Russian colleagues drove home to me an insight about our system that I had always known, but never before really appreciated.

These experiences have resulted in my conviction that our justice system must be administered in a manner that is truly fair, understanding, and insightful, taking special care to cherish the rights of the individual against the power of the state.

58. In the space provided, explain the qualities which you believe to be most important in a good judge.

I believe, and citizens have a right to expect, judges who understand the American system of justice and who are committed to making it function as well as it possibly can. Judges must be honest and above reproach. Judges must be willing to work hard and constantly strive

for the fair, prompt and efficient administration of justice. Judges should be persons who are not only widely recognized as skillful attorneys learned in the law, but also as lawyers who are broadly experienced, who are insightful yet decisive, who are fair minded, and who are respected community leaders. Finally, I believe it is extremely important that judges eschew arrogance and condescension both on and off the bench.

59. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

Although I consider myself to be a conservative with regard to following the principle of *stare decisis*, it has long puzzled me that District Judges' greatest fear seems to be reversal by the Montana Supreme Court. Similarly, I am bemused by the practice of the editor of "Montana Law Week" to prominently note "[judge] so and so affirmed" or "[judge] so and so reversed", with each synopsis of that week's Supreme Court decisions. Frankly, I don't think most people outside of the bench, and apparently, some portion of the bar, much care if an otherwise competent judge occasionally gets reversed.

I hold these views because they go to the heart of this question. Although judges sometimes get reversed on issues like interpretations of new statutes, or improper procedures, and even occasionally on fact issues, the question here goes to issues surrounding "judge-made" law. Citizens and attorneys have a right to expect, and do expect, that once a rule is established that it will be applied in a consistent fashion to similar situations in the future. However, once in a while new or unforeseen situations arise, or perhaps the rule is no longer workable in the manner intended, etc. If judges, out of fear of reversal, or for any other reason, mechanically apply the existing rule, no matter how unacceptable the result, the law becomes stagnant or worse, unjust. The only way for the law to be dynamic and fair is for judges to occasionally, after due deliberation, stick their necks out and try something new. If they are wrong, the worst that will happen is that they will be reversed. If they are right, justice and the law will be advanced.

For an example of a recent case where I, unfortunately unsuccessfully, urged a court to reject a court-made precedent, and adopt a different approach, see my attached writing sample from Tribes v. Bryant, 05-1580-CR. My rationale in this brief gives an illustration of how I balanced deference to precedent with flexibility for a just result.

60. In the space provided, state the reasons why you are seeking judicial office. Please indicate whether the judicial salary will be an increase or decrease over in your current gross income.

Over the years I have passed over several opportunities to apply for judgeships because I viewed the court as a relatively passive component of the judicial system since judges are completely constrained by the parameters of cases litigants bring before them. I

preferred the activity and relative independence of criminal prosecution as well as the prosecutor's unique power to promote justice by helping individuals and society as a whole. However, in recent years I have become increasingly interested in the judiciary's role in shaping the law as it is applied. As a consequence, in the last couple of election cycles I gave very serious consideration to running for the Supreme Court. In the end I decided against doing so because the work of that court is so removed from the direct contact with people and action work I have always enjoyed. Plus, I would have to spend a substantial part of my time in Helena when I strongly prefer remaining in Missoula.

In most ways a district judge has more ability than a supreme court justice to impact the application of the law, because work at the district court level is intimately involved with people and their problems. This direct contact balances my interests as described above. Moreover, Judge Henson's retirement has opened up an elected judicial position in Missoula for the first time in many years, and so this is the first opportunity I have had for a judgeship that matches my interests as they now exist.

The judicial salary is approximately equivalent to my current gross income from legal work.

61. What items or events in your career have distinguish you or of which you are most proud.

I have always been most proud of the confidence and support that my constituents have shown in electing me by wide margins to seven consecutive terms as the Missoula County Attorney, even when I was opposed in three of those elections. I am also very proud of the esteem of my peers nationally who elected me in a contested election by a three to one margin to the office of president of the National District Attorneys Association.

62. State any pertinent information reflecting positively or adversely on you which you believe should be disclosed to the Judicial Nomination Commission.

Nothing that has not been disclosed elsewhere in this application.

63. Is there any comment you would like to make that might differentiate you from other applicants or that are unique to you that would make you the best judicial candidate?

Since I will not know the names or qualifications of other applicants until well after this is written, it is not possible to know if I am unique in the field of candidates. Nevertheless, I would be surprised if any other applicant will offer my combination of even temperament, values, broad legal experience, knowledge of the law, management skill, leadership, work ethic, demonstrated fairness, public service, and community respect. These are the qualities the public expects judges to have. I must be considered the most qualified and best candidate unless some other applicant proves to be superior to me on at least a majority of these categories.

J. CERTIFICATE OF APPLICANT

I understand the submission of this application expresses my willingness to accept appointment to the Judiciary of the State of Montana, if tendered by the Governor of the Montana Supreme Court, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Canons of Judicial Ethics, if appointed.

(Date)

(Signature of Applicant)

ROBERT L. DESCHAMPS, III
TRIBAL PROSECUTOR
Confederated Salish and Kootenai Tribes
P.O. Box 278
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(406) 675-2700

**IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND KOOTENAI
TRIBES OF THE FLATHEAD RESERVATION, PABLO, MONTANA**

CONFEDERATED SALISH)	Cause No. 05-1580-CR
AND KOOTENAI TRIBES,)	
)	
Plaintiff,)	MEMORANDUM IN
)	OPPOSITION TO MOTION TO
vs.)	DISMISS
)	
JOLENE M. BRYANT,)	
)	
Defendant.)	

Robert L. Deschamps, III, Tribal Prosecutor, respectfully submits this memorandum in response to the defendant's motion to dismiss. The motion is based on a contention that the arresting officer failed to read to the defendant the portion of the Montana "Implied Consent Advisory" informing the defendant that she had a right to an independent blood test after being arrested for DUI. The arresting officer was Polson officer Bill Smith,

and according to his report, he read the defendant the short form Implied Consent Advisory used with handheld portable blood alcohol test devices (PBT). This form does not contain any provision advising defendants that they may obtain a blood test at their own expense. The defendant took the PBT and gave a blood alcohol content (bac) reading of .184. The defendant was then taken to Tribal Law and Order for processing by a second officer, Bill Dupuis. Dupuis did not read the complete advisory, including the portion informing suspects of a right to an independent blood test. Despite this, the defendant, in her own handwriting, directly under the paragraph advising of the right to an independent test, “xed” the box stating that she would take the test. On the next line she, again in her own handwriting, dated and signed a statement that the advisory was read to her. She then again signed and dated the form. A copy is attached to this brief.

Thereafter she took a breathalyzer test and gave a bac reading of .132.

As the defense brief notes, a similar case, although with different facts resulting in a refusal to take the test, is pending before this court in cause no 05-1178-CR, *Tribes v. Lincoln Billideaux*. The issue has also arisen in a Criminal Endangerment case, *Tribes v. Susan Bourdon*, 05-1131-CR. The issue keeps coming up because of Montana case law, specifically *State v. Strand*, 286 Mont. 122, 951 P.2d 552 (1997) which states that an arresting officer has the affirmative duty to advise a DUI suspect that he has a right to an independent blood test, and that a failure to do so constitutes a violation of the defendant’s due process right to exculpatory material. *Strand* specified that the remedy for such a failure would be suppression of any blood alcohol test obtained by the officer. A subsequent case, *State v. Minkoff*, 308 Mont. 248, 42 P.2d 223 (2002) overruled the remedy provided by *Strand* and said that thereafter the proper remedy would be dismissal of the case. These are the cases cited by the defendant here, and other similarly situated defendants, in support of motions for dismissal for various alleged implied consent advisory defects.

The defendants’ reliance on the cited cases is misplaced for all of the following reasons:

1. Neither case, (nor the applicable statute) requires the reading of an “implied consent advisory.” The issue in both cases cited by the defense was a perceived interference by the officer with the defendant’s right to obtain an independent blood test. In *Strand* the officer read part of the printed implied consent advisory, but not the portion notifying the defendant of his right to obtain an independent test. In *Minkoff*, the officer actually did read the entire advisory but then attempted to answer questions from the

defendant about the merits of an independent test. Although the trial court upheld the officer's actions, a majority of the Supreme Court didn't like his answers and decided to throw out the entire case, citing violations of "due process." In any event, neither case requires some particular incantation from the officer before a blood test is admissible. At most the cases stand for the proposition that the defendant must be unequivocally advised of his right to an independent test. In this case, the defendant, in her own handwriting, acknowledged that the form had been read to her. It is entirely possible she read the portion of the advisory to herself before she signed the document. The Montana Implied Consent statute, 61-8-402 MCA, which has been adopted by the Tribes, does provide that in addition to the blood alcohol detection test administered at the direction of the officer, a person may obtain an independent test for determining the presence of alcohol in the person's system. § 61-8-402 (2), MCA. However, there is nothing in the statute that requires a reading of a so-called "Implied Consent Advisory" form. That requirement is entirely an invention of the court in *Strand*, 286 Mont. 122, 126, 951 P.2d 552, 554, where the court said:

"We agree with the State that this Court's holding in *Swanson* [*State v. Swanson*, 222 Mont. 357, 722 P.2d 1155 (1986)] did not go so far as to create an affirmative duty to inform the accused of his right to an independent blood test. . . . We now take the next step and hold that due process requires that the arresting officer inform the accused of his or her right to obtain an independent blood test ."

No direct authority cited for this holding, although the court mentions *Montano v. Superior Court*, 149 Ariz. 385, 719 P.2d 271 (1986), and *State v. Turpin*, 94 Wash.2d 820, 620 P.2d 990 (1980) in reference to related points. *Montano* does in fact establish a court-made Arizona rule that officers must advise DUI suspects of a right to an independent test, even while noting that other states have rejected such a requirement. *Turpin's* requirement *was* established by a statute, RCW 46.61.506, which has no equivalent in Montana (or Arizona) law.

2. There is no clear American Constitutional right to have **any** portion of an "implied consent advisory" read. The Montana cases finding a due process violation for interference with a defendant's right to obtain an independent test do not specify if this is a due process right under Article II, section 17 of the Montana Constitution or if the court is finding such a right under the 14th Amendment to the United States

Constitution. Neither constitution is cited, nor are any federal cases granting such a right under the federal constitution. The one germane state case cited, Arizona's *Montano*, decided the issue on its interpretation of the Arizona constitution.

The courts of the Confederated Salish and Kootenai Tribes are courts of an independent sovereign, and while deference ought to be accorded the pronouncements of the Montana Supreme Court on matters within that court's jurisdiction, the Tribal court is certainly free to make up its own mind about matters within its jurisdiction. The folly of blindly following the *Minkoff* automatic dismissal rule, regardless of the circumstances, is illustrated in the *Bourdon* case referenced above. That case involves an endangerment charge. But an even better example of where this ill-conceived rule logically leads would be in a homicide case where an allegedly intoxicated driver in a stupor drives the wrong way on a highway, resulting in a head on collision where an entire innocent family is killed. Such occurrences have happened in adjoining jurisdictions in recent times. If somehow the investigating officers neglect to advise the drunken wrong-way driver that he or she is entitled to an independent blood test, then *Minkoff* dictates that the multiple-count homicide case should be dismissed no matter what other independent evidence besides the officer's blood alcohol test might establish criminal culpability!

Moreover, it must be noted that this court is not subject to the provisions of the Montana Constitution, nor for that matter, the United States Constitution. It is subject to the provisions of the Tribal Constitution and the Indian Civil Rights Act, 25 U.S.C. section 1302. The Tribal Constitution has no due process clause. The Indian Civil Rights Act does, in subsection (8), using language that mirrors that used in the federal constitution as well as Montana's and most other states.

Thus, the question is: does the due process clause of the Indian Civil Rights Act require the reading of all or some of an "Implied Consent Advisory?" Counsel has found no case that directly answers this question. There are, however, a plethora of cases from various state jurisdictions that deal with the same question under state and federal constitutions. These cases are collected in an annotation at 45 ALR4th 11. Joining Montana in

finding a due process right, at least to an advisory that a suspect has a right to obtain an independent test, are Arizona, California, Georgia, Maine, Missouri, Nevada and Tennessee. Finding that there is no such right are Alaska, Idaho, Mississippi, New Mexico, North Dakota, Pennsylvania, and New Jersey. One federal case, *Scarborough v. Kellum*, 525 F.2d 931, (CA 5, 1976) had the issue of a federal constitutional right before it on a writ of habeas corpus based on an unsuccessful attempt to assert such a right through the Mississippi courts, but the federal court declined to hear the case because of procedural missteps by the petitioner. Thus, there is no clear cut American constitutional right to even an advisory of the right to obtain an independent test, much less a verbatim reading of some “Implied Consent Advisory” form. This court is free to decide this issue as it sees fit.

The Tribes suggest that a common-sense case-by-case analysis is the best approach to the question. The facts of each case should be developed to insure that each defendant is treated fairly and that it is clear that the defendant is apprised of his or her rights with regard to blood alcohol tests. This would include the right to obtain an independent test. That being said, there obviously are cases where the suspect is so intoxicated that he or she is incapable of understanding or making rational decisions no matter what the officer states. Similarly, there are cases where suspects are belligerent and refuse to acknowledge understanding. There may be cases where the suspect, by words or actions, demonstrates a clear understanding of his or her rights without the necessity of having the officer go through the exercise of telling the suspect what it is plain the suspect already knows. In the case at bar the defendant wrote, in her own handwriting, an apparent acknowledgement of an understanding of the advisory. A ritualistic incantation of particular words printed on a piece of paper should not be required in any situation.

3. If a violation is found, this court may fashion its own remedy and is not bound to adopt the most recent remedy fashioned by the Montana Supreme Court. It is of course possible that this court will find instances where the police do not treat suspects fairly. When confronted with such a situation in *Strand* in 1997, the Montana court decided that the remedy would be the suppression of any blood alcohol test that was unfairly obtained. Five years later the Montana court changed its mind and decided in *Minkoff* that the remedy should be dismissal. In the future it might, and should, change its mind again, particularly if confronted with the outrageously absurd logical result of its rule illustrated by the multiple count homicide example given above,

and go back to the suppression remedy or perhaps come up with something entirely different. This court is not obliged to follow the shifting opinions of the Montana court and should fashion its own remedy, again based on fairness and common sense.

Dismissal is an extreme remedy that ought to be reserved for the most egregious violations. Arizona, in *Montano*, and Montana in *Minkoff*, appear to be alone in establishing a constitutional requirement of dismissal in cases where the defendant is not advised of a right to an independent blood test. Other states requiring dismissal for such a failure base the decision on a statute. See, *State v. Turpin, supra*, (Washington), and *People v. Underwood*, 253 Mich. App. 598, 396 N.W.2d 443 (Michigan, 1986). The remaining states that require the advisory only require that the results of the police test be suppressed as was formerly the rule in Montana pursuant to *Strand*.

Suppression of evidence unlawfully obtained is a venerable remedy that dates back to at least *Olmstead v. United States*, 277 U.S. 438 (1928), which was applied to the states as a part of the Fourteenth Amendment in *Mapp v. Ohio*, 367 U.S. 643 (1961). Since that time suppression has been the tool of choice to obtain police compliance with a variety of constitutional protections. This includes not only search and seizure issues, but also such important constitutional rights as the right to remain silent. *Miranda v. Arizona*, 384 U.S. 436 (1966). Suppression has become so much a part of our criminal procedure that the mechanics for applying it have become codified. See, for example, Part 3, Chapter 13, Title 46, MCA: "Suppression of Evidence" and its Tribal code equivalent, §§ 2-2-802 and 2-2-803 CSKT Laws Codified. If suppression is an adequate remedy to protect an accused's constitutional rights to the sanctity of his home against unreasonable searches and seizures and his right to remain silent, it surely should be an adequate remedy to protect against the use of blood alcohol tests obtained when the accused was not advised that he or she had a right to an independent test.

Therefore, if in the future this court determines that a police officer blunders in the handling of the implied consent procedures in a case the Tribes suggest that the court suppress any evidence obtained as a result of the blunder, but not take the extreme action of dismissing the case, regardless of other, perhaps overwhelming, evidence of guilt which was legally obtained.

Respectfully submitted this _____ day of January, 2006

Robert L. Deschamps, III

CERTIFICATE OF MAILING

I, Robert L. Deschamps, III, hereby certify that on this ____ day of January, 2006, I served a true and correct copy of the foregoing MEMORANDUM by mailing a copy to the following:

Ann Sherwood, Tribal Defenders Office

Application form approved 7/10/93
Revised 12/27/94